

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
YOKO ONO LENNON, SEAN ONO
LENNON, JULIAN LENNON, and EMI
BLACKWOOD MUSIC, INC.,

Plaintiffs,

-against-

PREMISE MEDIA CORPORATION, L.P.,
C&S PRODUCTION L.P. d/b/a RAMPANT
FILMS, PREMISE MEDIA DISTRIBUTION
L.P. and ROCKY MOUNTAIN PICTURES,
INC.,

Defendants.
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08 CV 3813 (SHS)

DECLARATION OF JOHN SULLIVAN IN
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION

John Sullivan declares and states under penalty of perjury that:

1. I am 38 years old, and I am a resident of Los Angeles County, California. I am a partner in Premise Media Corporation, L.P. I make this declaration in support of Defendants' memorandum in opposition to Plaintiffs' motion for preliminary injunction. The matters stated herein are true of my own personal knowledge.

2. I am one of the three producers of the documentary film *EXPELLED: No Intelligence Allowed* featuring Ben Stein (alternatively, "the film" or "*Expelled*"). As a producer of the film, my responsibilities included arranging interviews, coordinating production crews, location, management, directing editors and working with screenwriters to bring the film to completion.

Education And Work History

3. In 2000 I pursued a certificate in Digital Media from San Francisco State University Continuing Education and completed additional relevant courses from Stanford University and Vancouver Film School.

4. I have been active in the entertainment field, specifically live entertainment and production, for over 20 years. My responsibilities have included marketing, advertising and operational direction for over a hundred headline concerts in large venues. Following my education in digital media, I produced a number of student projects including two short films which have been featured at numerous film festivals including the Los Angeles International Film Festival, Palm Springs Shortfest, Winnipeg International Film Festival, The Damah Film Festival, and the World Comedy Film Festival.

Creation of *Expelled*

5. In 2004, a friend introduced me to Walt Ruloff, who is now one of my partners in Premise Media. We found we both had mutual interests in films and the topics of Intelligent Design and Darwinian evolution, as these topics had recently been covered in a number of popular magazines. Through a number of follow-up meetings, Mr. Ruloff and I thought the topic would make a very interesting documentary subject if the film could remove the conversation from the halls of science, philosophy and religion, and make it accessible to the layman. Mr. Ruloff and I approached the actor, writer and economist Ben Stein about being the first-person host for the documentary. In the spring of 2006, we began preparation for filming the unscripted documentary as it would follow the intellectual and emotional journey of Mr. Stein as we interviewed various scientists, researches, historians and journalists on the subject matter.

6. From development to release, work on the film took approximately two years and two months. During that time we had a film crew travel North America, Western Europe and the Galapagos Islands for research and filming. Through these efforts we collected nearly 150 hours of interviews and footage which was meticulously culled down and shaped over six months by the producers, director, screenwriters and editors into a rough form of over two hours. Once assembled in a rough form, the film was continually edited down to a final form of one hour and thirty-nine minutes.

Themes of the Film

7. The film *Expelled: No Intelligence Allowed* is a feature-length documentary motion picture. It is a nationally released theatrical (*i.e.* in major movie theater chains) documentary film that examines the scientific community's academic

suppression of those who ask provocative questions about the origin and development of life.

8. *Expelled* explores in a satirical manner the issues surrounding the debate over Intelligent Design and evolution. It revolves around the idea of freedom, and most importantly freedom of speech and freedom of inquiry within science. The essential message of the film is that if we lose this precious right we are losing what is at the heart of America. The film documents several cases of professors, researchers and a doctor who dissent from the consensus view of Neo-Darwinian evolution and the consequences of this dissent on their careers.

9. The film makes the case that some opponents of Intelligent Design act as if Darwinian Evolution is an established "Natural Law," rather than being an established "Scientific Theory." Many scientists argue that the theory contains notable deficiencies. The documentary demonstrates that some members of the scientific community, major universities, and other public institutions have discredited scientists, scholars, and teachers because they have expressed their view or conclusion that Darwin's theory is inadequate as a full explanation for the development of life, and have offered serious criticism about the theory, and/or asserted a hypothesis of Intelligent Design. The film presents evidence that some scientists and educators who have questioned the Darwinian paradigm have endured unrelenting criticism in the academic community and public forums, suffered the loss of funding for academic projects, been unfairly denied professional advancement, and wrongfully experienced a loss of respect in the academic community.

10. The film seeks to inspire viewers to participate in the scientific, political,

cultural, and religious debates surrounding this issue, to urge the scientific community to consider views that differ from those held by many members of that community, and to take action to assure that candidates for public office and elected officials take positions and action to accord free speech rights to critics of the adequacy of Darwinian evolution and to advocates of Intelligent Design.

11. *Expelled* employs several visual mediums to create a unique style and message. While we use recent interviews of relevant scientists, professors, researchers and journalists, the film also draws heavily on historical stock footage to create metaphors and analogies to enhance the message we are trying to convey. For example, in the film we use the building, maintenance, and ultimately the tearing down of the Berlin Wall as a metaphor for the censorship of discussion of Intelligent Design occurring within academia. The entire film is cut using this stylistic approach, mixing present day interviews and black and white footage to create its own unique and distinguishable documentary style.

12. It was and is our explicit intent as the producers of the film, to create a documentary that stirs a spirited discussion and debate on this subject matter, particularly the elements of censorship in academia, government and cultural institutions. Our goal was to remove the debate from the confines of the ivory tower where it had been relatively contained for the last 150 years and present a compelling, informational documentary, which could be understood and appreciated by laypersons.

Use of the Song *Imagine*

13. We use the song *Imagine* in the film to implicitly and explicitly criticize the song's anti-religious message. Our use of the song is confined to the relevant

segment of it that we the filmmakers felt was needed to adequately invoke the song in its iconic form while highlighting the lyrics pertinent to at least one of its messages.

14. A reading of the lyrics of the song *Imagine* (attached hereto as Exhibit A) demonstrates its anti-religious message. The first three stanzas urge the listener to imagine a secular world without heaven or hell or any religion and imply that this is a world where all people can live life in peace. The song suggests that without religion, “the world will be as one.” See Exhibit A (sheet music and lyrics to *Imagine*). We as filmmakers believe this worldview is extremely naïve, and we set out to critique it in our film.

15. The film presents a series of interviews and film clips demonstrating the hostility scientists and others have regarding the role of any religious belief within science. The scientists we interviewed expressed the idea that it would be best to remove religion entirely from the public square.

16. We, the filmmakers, believe there is no greater, more popular or more recognizable communication of these ideas than the song *Imagine* as sung by John Lennon.

17. Just after we present a series of interviews of scientists who contend religion should be removed entirely from the public square, we play a clip from *Imagine* in order to critique its message and invoke the pervasive nature of this message in the greater social fabric. We used a 15-second fragment (containing ten words) of *Imagine*, that we believe squarely and succinctly captures the song’s anti-religious message: “Nothing to kill or die for, And no religion too.” See Exhibit B, attached hereto (DVD copy of the *Expelled* clip containing *Imagine*). This scene amounts to approximately

0.27% of the total film.

18. In this 15-second scene, *Imagine* is played and ten words from the corresponding lyrics are displayed on the screen in combination with several inter-cut stock footage images. The images provide a layered criticism and commentary of the song building upon each other as the music and lyrics play underneath. The images demonstrate the social and political process we the filmmakers believe would be required to actualize the ideas promoted by *Imagine*. The first image is a large circle of children in a school-sponsored activity in a classroom followed by an individual little girl spinning in playful bliss. This is followed by a clip of a Soviet national parade at the height of the Cold War echoing how these ideas cannot be maintained without realization in a politicized form. The final stock image clip running over the song is what we the filmmakers believe to be the last step in this process, which is a power grab or a move of “might is right,” by a dictator answering to no one. In this case we selected the image of General Secretary of the Communist Party of the Soviet Union, Joseph Stalin.

19. Immediately following the clip containing *Imagine* are the comments of philosopher and mathematician David Berlinski who says, “In part I think Mathew Arnold put his hands on it when he spoke about the withdrawal of faith. There is a connection between a society that has at least a minimal commitment to certain kinds of transcendental values and what human beings permit themselves to do one to the other.” We use Mr. Berlinski’s words to directly critique the ideas contained in the song *Imagine* and those proposed by the scientists and others interviewed in this larger segment of the film.

20. We purposefully positioned the clip using *Imagine* between interviews of

those who suggest that the world would be better off without religion and an interview suggesting that religion's commitment to transcendental values place limits on human behavior. We make the point that societies that permit Darwinism to trump all other authorities, including religion, pose a greater threat to human values than religious belief. Whether one agrees with this view or not, we specifically used the *Imagine* song clip to set up one side of the argument in a way that would be familiar to our intended audience. Exhibit C, attached hereto, is a copy of the transcript of the scenes leading up to, including and following the clip in which the *Imagine* clip is used.

21. We also use the clip from *Imagine* as a chronological transition. To us as filmmakers, *Imagine* is a secular anthem caught in a loop of history recycling the same arguments from years past through to the present. We remind our audience that the ideas they just heard expressed from modern interviews and clips that religion is bad are not new and have been tried before with disastrous results. Thus, we place one of the most iconic songs of the 1970's between modern day interviews and scenes from a time when religion was banned or ignored earlier in the Twentieth Century.

Marketing Of The Film

22. The film was significantly marketed and advertised prior to its opening as a national release in 1,052 movie theaters throughout the country. To market the film, unique radio and television commercials were created along with internet, print and newspapers ads. These advertisements were placed in major national outlets including cable television, national newspapers, and numerous high profile websites.

23. At no time in this highly public and national campaign did the producers use the song *Imagine* to market the film. The song was never used outside of the film, or

the scenes described above, in which it is clear we used the ideas and words expressed in *Imagine* as performed by John Lennon to criticize the song's message. In no way were we as producers seeking a positive commercial association with the song *Imagine* or John Lennon.

24. The film's credits list the song *Imagine* as follows:

"Imagine"
Written and Performed by John Lennon
EMI Records
Published by Lenono Music

The credits do not claim that we used the song under a license or received approval or any other permission from plaintiffs. See Exhibit D, attached hereto (DVD copy of the film *EXPELLED: No Intelligence Allowed*).

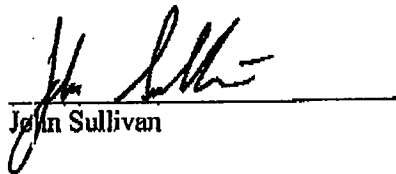
Public Response to the Film

25. The film has been covered on CNN Headline News, Fox News, Time Magazine, Newsweek, the New York Times, New York Sun, NPR, CNN, Variety, World News Daily and over 100 radio programs. Moreover, the film has been discussed extensively on a variety of blogs. For example, the blog on our own website (<http://www.expelledthemovie.com>) has well over 2,000 comments. Other web pages, including The New York Times and Yahoo! Movies, have also witnessed considerable discussion and public comments regarding the film.

26. As one of the filmmakers, I see the discussion around the film as an extremely positive reaction. I embrace and enjoy these discussions, even the sometimes harsh criticism of the film, as it is consistent with our film's message: people should be free to discuss, dissent, critique and endorse the ideas, words, and messages of others.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: Los Angeles County, California
May 13, 2008



John Sullivan

IMAGINE

Words and Music by
JOHN LENNON

Slowly **C** **Cmaj7** **F** **C(add9)** **C** **Cmaj7**

mf

F **C** **Cmaj7**

Im - ag - ine there's no hea-ven...

F **C** **Cmaj7**

It's eas - y if you try...

F **C** **Cmaj7**

No hell be - low us,

EXHIBIT A

Copyright © 1971 Lenono Music
All Rights Controlled and Administered by SBK BLACKWOOD MUSIC INC.
All Rights Reserved International Copyright Secured

F C Cmaj7

a - bove us on - ly sky.

F Am/E

Im - ag - ine all the peo -

Dm7 F/C G C/G

ple liv - ing for to - day.

G7 C Cmaj7

Ah. Im - ag - ine there's no coun -

80

Chord diagrams: F, C, Cmaj7

tries.
ions.

It is - n't hard to do.
I won-der if you can.

Chord diagrams: F, C, Cmaj7

Noth-ing to kill or die
No need for greed or hun -

Chord diagrams: F, C, Cmaj7

for
ger,

and no re - li - gion, too.
a broth - er - hood of man.

Im - ag - ine all the peo -
Im - ag - ine all the peo -

ple
ple
liv - ing life in peace
shar - ing all in the world.

You you may say I'm a
dream - er. But I'm not the on - ly one.

F
Am/E
Dm7 **F/C** **G** **C/G**
G7 **F** **G**
C **E7** **F** **G**

82

C E7 F G

I hope some day you'll

join us and the world will

be as one. Im - ag - ine no pos - ses -

2 F G C

and the world will live as one.

rit.

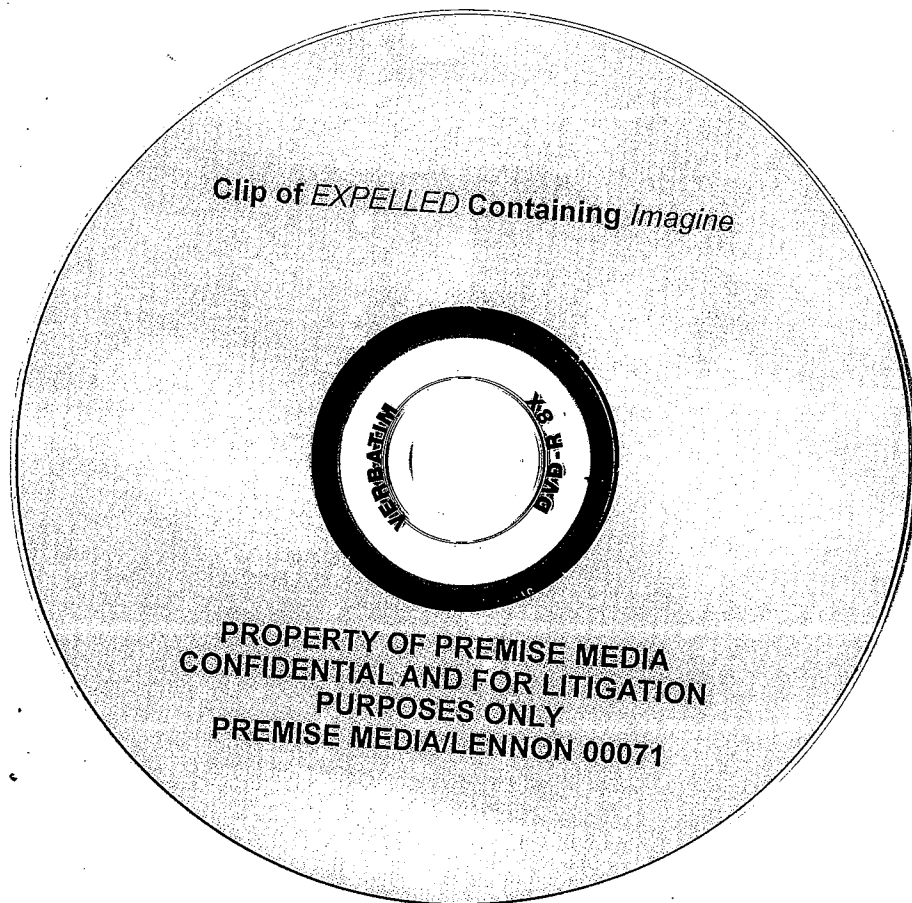


EXHIBIT B

TRANSCRIPT OF IMAGINE CLIP IN EXPELLED

ATKINS: Religion, I mean it's just fantasy, basically. It's completely empty of any explanatory content... and it's evil as well. (laugh)

MAHER: Half the people in this country think that drugs is what you have to regulate to make it safer and half the people think guns, that's what you got to regulate to make it safer. But I always think if you're going to regulate one thing that has the most potential to cause death and destruction, religion, you got to start with religion.
(audience applauds)

MYERS: Religion is an, is an idea that gives some people comfort, and we don't want to take it away from them. It's like, it's like knitting. People like to knit. You know, we're not going to take their knitting needles away, we're not going to take away their churches. Uh, but what we have to do is, is get it to a place where religion is treated at the level it should be treated, that is, something fun that people get together and do on the weekend and really doesn't affect their life as much as it has been so far.

STEIN: So what would the world look like if Dr. Myers got his wish?

MYERS: Greater science literacy, which is going to lead to the erosion of religion, and then we'll get this positive feedback mechanism going where, as religion slowly fades away we'll get more and more science to replace it, and that will displace more and more religion, which will allow more and more science in, and we'll eventually get to that point where religion has taken that appropriate place as, as, as side dish rather than the main course.

STEIN: Dr Myers would like you to think that he's being original but he's merely lifting a page out of John Lennon's songbook.

SONG: "Nothing to kill or die for,
And no religion too"

BERLINSKI: In part, I think Matthew Arnold put his hands on it when he spoke about, um, the withdrawal of faith. There is a connection between a society that has at least a minimal commitment to certain kinds of transcendental values and what human beings permit themselves to do one to the other.

STEIN: That got me thinking: What other societies have used Darwinism to trump all other authorities including religion? As a Jew, my mind leapt to one regime in particular...

BERLINSKI: The connection between Hitler and Darwin is, of course, historically a difficult connection, because they were separated by a good many years -- one was English, one was German. Nonetheless, if you open *Mein Kampf* and read it, especially if you can read it in German, the correspondence between Darwinian ideas and Nazi ideas just leaps from the page. Of course, you have to add every historical caution. Not everyone who read Darwin became a Nazi. Obviously not, no one is making that case. Darwinism is not a sufficient condition for a phenomenon like Nazism, but I think it's certainly a necessary one.

STEIN: This was a connection I had to explore personally.

EXHIBIT C

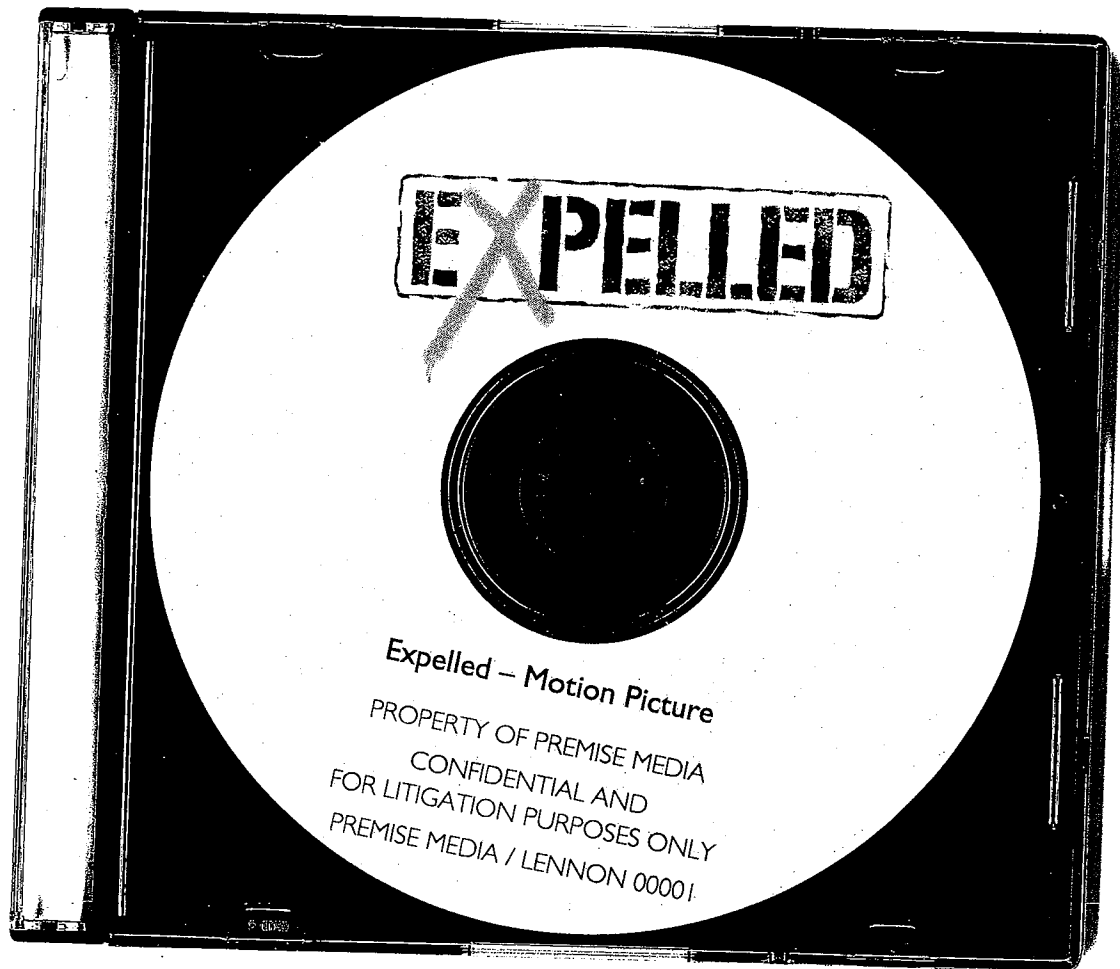


EXHIBIT D